IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 568 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant
Versus
PRAVINBHAI JIVANBHAI KAMALI - Respondent

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Appearance :
MR MA PATEL ADDL PUBLIC PROSECUTOR for Appellant: 1,
MR SUNIL C PATEL for Respondent : 1,

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 21/02/2007

ORAL JUDGMENT

1. The appellant – State of Gujarat has preferred this Appeal under Section 376 of the Code of Criminal Procedure, 1973, (hereinafter referred

to as 'the Code' for short) challenging the order of acquittal dated 12.12.1996 passed by the learned JMFC, Umargaon acquitting the respondent original accused of the charge of committing an offence punishable under Sections 325 and 504 of the Indian Penal Code in Criminal Case No. 1117 of 1994.

2. This Court (Coram: M.H.Kadri, J.) (as he then was) granted leave and admitted the appeal vide order dated 20.1.1998.

3. Heard the learned counsels for the parties.

4. Brief facts leading to filing this appeal deserve to be set out as under.

5. The PW-1 had to file a complaint in the Umargaon Police Station on 15.8.1994 against the original accused alleging that he committed an offence punishable under Sections 325 and 504 of the Indian Penal Code. The said complaint came to be registered as I. CR. No. 134 of 1994 in the Umargaon Police Station. The complainant / informant stated in his complaint that he was resident of village Daheri. His elder son Pravinbhai PW-4 was handicapped on account of Polio since childhood. On 14.8.1994 at about 8-00 O'clock in the morning, when his elder son Pravinbhai PW-4 had left his house for going to temple of Goddess Amba at Vapi. At that time, his neighbour Pravinbhai Jivanbhai Kamdi, i.e. accused intercepted him and hurled abuses and snatched his stick and inflicted repeated blows on his left thigh, resulting into fracture of

left femur bone. On account of non-availability of any vehicle, the complaint could not be registered on the same day and it was registered on the next day i.e. on 15.8.1994. The police investigated the offence and collected evidence and filed its report in form of police chargesheet on 29.1.1994 against the accused alleging that the accused had thus, committed an offence punishable under Sections 325 and 504 of the IPC. The accused was summoned and the charge was framed. The accused denied the charge and claimed to be tried. After recording the evidence of the prosecution, the further statement of the accused came to be recorded under Section 313 of the Code, wherein, the accused denied the case of the prosecution. The trial Court after detailed analysis of the evidence on record, came to the conclusion that the prosecution could not establish its case beyond doubt and therefore, acquitted the accused of the charge of committing offence punishable under Sections 325 and 504 of the IPC vide its order dated 12.12.1996, which is impugned in the present appeal.

6. Shri M.A. Patel, learned APP for the appellant State has vehemently submitted that the order of acquittal being perverse and contrary to the evidence on record, the same deserves to be quashed and set aside. The trail Court has erroneously come to the conclusion that the prosecution could not prove its case beyond

reasonable doubt. The trial Court ought to have appreciated the fact that the witnesses have by and large supported the version of the prosecution and therefore, the trial Court ought not to have come to the conclusion that the prosecution could not prove its case beyond doubt. Shri Patel, learned APP has submitted that the complainant has given evidence supporting the case in the complaint. The injured witness has also stated as to how he came to be assaulted and injured on account of the stick blows inflicted by the accused and therefore, his version ought to have been appreciated by the trial Court in its true perspective. The trial Court ought not to have given undue weightage to minor discrepancies and contradictions in the version of the witnesses for the prosecution. The medical evidences adduced by the prosecution on record clearly indicate two injuries inflicted with hard and blunt substance. The evidence of Doctor cannot be said to have not supported the case of the prosecution. The other witness namely sister of the victim PW-4 also could not have been brushed aside by the trial Court as being interested witness. In view of these submissions, Shri Patel, learned APP has submitted that the order of acquittal deserves to be quashed and set aside and as it appears from the record and evidence, the accused did commit offence punishable under Sections 325 and 504 of the

IPC, he be inflicted with appropriate punishment in accordance with law.

7. Shri S.C.Patel, learned counsel appearing for the respondent – original accused has submitted that this being an acquittal appeal, the order of acquittal need not be interfered with under Section 378 of the Code in absence of any cogent plea that the order of acquittal is so perverse as to result into miscarriage of justice. Shri Patel has submitted that the glaring infirmities and gaps in the version of the prosecution were rightly held to be capable of raising doubt in the case of the prosecution and therefore, it was logical that the accused be accorded benefit of doubt. Shri Patel for the respondent has submitted that the medical evidence namely the certificate indicates that the injured gave history of falling down from the staircase for sustaining injury and the injured has not given the name of the accused to the Doctor and therefore, non-disclosure of the name of the accused in the history given by the injured to the Doctor and the cause for sustaining injury being fall from the staircase in itself would go to show that the prosecution case was rightly not believed by the trial Court. In support of his submission, Shri Patel has relied upon the decision of the Apex Court in case of ***DEVINDER VS. STASTE OF HARYANA,*** reported in 1996(6) Supreme 771, wherein also the Apex Court has

held that non-disclosure of the name of the accused was a serious infirmity in the case of the prosecution. Shri Patel for the respondent in support of his submission with regard to non-disclosure of the name of the accused and the history to the Doctor has also relied upon the decision of this Court in case of ***STATE OF GUJARAT VS. HASMUKH @ BHIKHA GOVA HARIJAN,*** reported in 1996(1) GLR p.292 and submitted that it would also be the duty of the Medical Officer to inquire and to find from the injured the name of the assailant. In the instant case, as it could be seen from the medical evidence, neither the name of the accused nor any accusation or allegation against the accused were narrated before the Medical Officer by the injured. On the contrary, the accused disclosed all together a different reason for his injury and therefore, the trial Court has rightly not believed the case of the prosecution. Shri Patel for the respondent has further submitted that the prosecution for the reasons best known to them has chosen not to examine any independent witnesses in support of the case. It was not the case of the prosecution that independent witnesses were not available, in fact, the testimony of the sister of the injured disclosed that independent witnesses were available and therefore, prosecution ought to have examined the independent witnesses in support of its case. Non-examination of the independent

witnesses, therefore, deserved to be viewed as infirmity in the case of the prosecution. Shri Patel for the respondent has relied upon the decision of this Court in case of ***STATE OF GUJARAT VS. NANUSING AND OTHERS,*** reported in 1979 CRI.L.J. p.627, wherein, this Court has held that when the independent witnesses were available, then, their non-examination by the prosecution would deal a serious blow to the case of the prosecution. Shri Patel for the respondent has submitted that though the incident alleged to have occurred on 14.8.1994 in the morning at 8-00 O'clock, the complaint came to be registered after a passage of about 26 hours, as the complaint came to be registered at 9-00 O'clock on 15.8.1994. Shri Patel has submitted that this delay in lodging the FIR is to be treated as fatal to the case of the prosecution. The prosecution has not come out with cogent reasons for such a long delay. Shri Patel, in support of his aforesaid submission, has relied upon the decision of the Apex Court in case of ***RAMJI SURIYA AND ANOTHER VS. STATE OF MAHARASHTRA,*** reported in AIR 1983 Supreme Court p.810, wherein, the Apex Court in Para-5 deprecated unexplained delay of 24 hours in lodging the FIR. Shri Patel for the respondent has relied upon the decision of Division Bench of this Court in case of ***STATE OF GUJARAT VS. BHARATBHAI BALUBHAI LAD & ORS.,*** reported in 2006 (1) GLR p.514, in support of his submission that

ordinarily in an acquittal appeal, the Court should not interfere with the order of acquittal unless and until it is aptly demonstrated by the appellant that the order of acquittal has resulted into miscarriage of justice. Shri Patel has submitted that in view of these, the appeal deserves to be dismissed.

8. Heard the learned counsel for the parties at length and perused the record and proceedings. The complainant – father of the injured witness PW-4 in his testimony, by and large supported the version of the prosecution but it cannot be said that it also explained the time of 26 hours taken in lodging the complaint. The prosecution had not explained as to why 26 hours time was taken in lodging the complaint. Non-availability of the transportation for travelling the distance of 6 Kms in a monsoon season, when no rain was reported, cannot be said to be a cogent reason for explaining delay of 26 hours. in filing the complaint. PW-1 has deposed in his testimony that police had sent yadi to Ashirvad hospital, however, at Ashirvad Hospital, doctor declined to treat the injured and therefore, they have required to go Valsad Civil Hospital. The doctor of Valsad Civil Hospital, PW-7 has stated that the victim – injured witness informed him that he had sustained injury as he had fallen down from the staircase and injured did not carry any yadi. The medical certificate, which has been exhibited clearly indicates the

aforesaid facts. The factum of injury is though recorded so far medical evidence is concerned, it is not cogently revealing the history that the accused was responsible for inflicting blows and that injury was sustained on account of stick blow received from the accused. No independent witness has been examined and the sister's testimony go to show that when the alleged incident occurred, many people gathered. Therefore, it was open for the prosecution to examine independent witness for corroborating version of the injured and the complainant. The witnesses have time and again stated even the names of persons, who had gathered on the sport of the offences, yet, it has remained unexplained as to why not a single independent witness has been examined by the prosecution in support of their case. The facts remain to be noted that PW-1 has stated in his deposition that in his village there were 4 to 5 rickshaws available and the village is well connected with Umargaon as the public transport and S.T. Buses were available. The version of PW-1 that bullock cart was required for travelling from his residence to Dehari road due to mud on account of monsoon and non-availability of the bullock cart, was a reason for not lodging the complaint, did not get support from the testimony of other witnesses. The injured witness has stated that bus stop is quite close to his residence and the distance between

between his residence and bus stand is only 6 feet. The bus is available to go to Umargaon. He has stated that on the date of the incident, it was not raining. He stated that he was fully conscious after receiving the injury and he was fully conscious when he visited the doctor. He has denied that he had stated to the doctor that he has sustained injury on account of falling from the staircase. He has stated that facts mentioned in the certificate were not told by him but was told by his father. The other prosecution witnesses have attempted to support the case of the prosecution but their testimony also cannot be said to be cogent enough to bring home guilt on the part of the accused for inflicting punishment under Section 325 and 504 of the IPC.

9. It also deserves to be noted that the prosecution and/or the PW-1 and PW-4 could not explained the reason for not disclosing the name of the accused and the alleged cause of his injury to the doctor, who examined him and treated him at Civil Hospital, Valsad and whose certificate is brought on record by the prosecution. The story of sustaining injuries narrated by the accused as per the say of the doctor PW-7, raises reasonable doubt in the case of the prosecution. Shri Sunil Patel has relied upon the decision in case of Devinder (supra) in support of his submission that in this facts and circumstances, non-disclosure of the name of the

accused is rightly treated as serious blow to the case of the prosecution.

10. It may also be appropriate to note here that the Doctor PW-7 has not been declared hostile nor has he been subjected to any other questioning, leading to show that he was not telling truth. When the doctor is not declared hostile, his version was required to be accepted and the fact remains that the injured and the complainant for the reasons best known to them did not disclose either the name of the accused or the alleged reason for sustaining injury, on the contrary, they stated that cause of injury was fall from the staircase. This would certainly deal a serious blow to the case of the prosecution and leaving the scope for reasonable doubt in the case of the prosecution, benefit whereof, had rightly been given to the accused respondent.

11. The delay of 26 hours in lodging the FIR, sought to be explained on account of non-availability of the transportation has also not been believed by the trial Court as it did not inspire any confidence. The 24 hours delay, sought to be explained with non-conveniencing reason was found to be fatal by the Apex Court in case of Ramji Suriya (supra). This fact, therefore, was also capable of raising reasonable doubt in the case of the prosecution. The non-examination of independent witnesses, who were stated to be on the spot of the offence, also would raise reasonable doubt in the case of the prosecution.

This will get support from the decision of this Court in case of State of Gujarat Vs. Nanusing (supra).

12. It may be noted that this being an acquittal appeal, the observation of the Division Bench in case of State of Gujarat Vs. Bharatbhai Balubhai (supra) that in acquittal appeal no interference is called for unless it is established by the appellant that the impugned order has resulted into miscarriage of justice, also would help the case of the respondent.

13. In view of the aforesaid discussion, this Court is of the considered view that the order of acquittal does not call for any interference as the prosecution has failed in establishing its case beyond reasonable doubt against the accused so as to bring home guilt on his part. The order of acquittal need not be interfered with in the present proceedings.

14. In the result, the appeal deserves to be dismissed and is accordingly dismissed. Bail bond stands cancelled.

(S.R.BRAHMBHATT, J.)

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